HARIS FATILLAH MOHD IBRAHIM v. SURUHANJAYA PILIHANRAYA MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD J
[ORIGINATING SUMMONS NO: 24-3-01-2015]
11 JUNE 2015

CONSTITUTIONAL LAW: *Election – Delimitation exercise of Parliamentary and State border – Application for relevant information to enable plaintiff to make informed representation relating to process – Defendant's failure to supply relevant information – Application for declaratory reliefs via originating summons ('OS') – Whether affected persons had right to information relating to changes made to Parliamentary and State Constituencies – Whether reliefs sought outside scope and functions of defendant – Whether court had jurisdiction to grant reliefs sought – Whether plaintiff had requisite locus standi to initiate proceedings – Whether plaintiff had right to relevant information – Whether OS premature and abuse of court process – Federal Constitution, art. 113 – Caxton (Kelang) Sdn Bhd v. Susan Joan Labrooy & Anor*

ELECTION: *Election Commission – Delimitation exercise of Parliamentary and State border – Application for relevant information to enable plaintiff to make informed representation relating to process – Defendant's failure to supply relevant information – Plaintiff sought declaratory reliefs via originating summons ('OS') – Whether affected persons had right to information relating to changes made to Parliamentary and State Constituencies – Whether reliefs sought outside scope and functions of defendant – Whether court had jurisdiction to grant reliefs sought – Whether plaintiff had requisite locus standi to initiate proceedings – Whether plaintiff had right to relevant information – Whether OS premature and an abuse of court process – Federal Constitution, art. 113 – Caxton (Kelang) Sdn Bhd v. Susan Joan Labrooy & Anor*

Vide originating summons ('OS') (encl. 1), the plaintiff sought to obtain relevant information pertaining to the proposed delimitation of Parliamentary and State border ('delimitation exercise') to be carried out by the defendant pursuant to the notice to be issued under Item 4, Part II, Thirteenth Schedule of the Federal Constitution ('13th Schedule of the FC'). The plaintiff, a registered voter in the Parliamentary Constituency of Petaling Jaya Selatan P105 and the State Constituency of the State Legislative Assembly of Bukit Gasing, was among the majority of 52% popular voters during the Thirteenth General Election ('13th GE'). The defendant had announced to the public of its intention to gather information to commence a nationwide delimitation exercise in accordance with Items 4 and 5 of the 13th Schedule of the Federal Constitution ('FC'). Pursuant to the said exercise, the public will be allowed to make representations after the publication of the delimitation notice by way of *gazette* at identified areas and in the local newspapers circulating in the constituencies. By a letter dated

A 8 December 2014, the plaintiff made a request from the defendant under Items 4 and 5 of the 13th Schedule of the FC that he be supplied with all relevant information to enable him to make an informed representation relating to the said process. The defendant, however, failed and/or neglected to supply the relevant information to the plaintiff. Hence, the plaintiff sought
B *inter alia,* the following declaratory reliefs, *ie*, (i) that all the affected persons had the right to all information relating to changes made to the Parliamentary and State Constituencies where these people were registered voters; and (ii) that all the affected persons be conferred with the right to the relevant information in the form which would enable all the affected persons to make
C effective representations pertaining to the proposed recommendations under Item 5 of the 13th Schedule of the FC. The issues that arose were (a) whether this court had the jurisdiction to grant the relief that the plaintiff sought *vide* this OS; (b) whether the plaintiff had the requisite *locus standi* to bring this proceedings; and (c) whether the plaintiff had the right to the relevant information by virtue of art. 10 of the FC.
D

Held (dismissing originating summons):

(1) In order to be entitled to the declaratory reliefs sought herein, the plaintiff must satisfy the six conditions laid down in the case of *Caxton (Kelang) Sdn Bhd v. Susan Joy Labrooy & Anor* which were (i) there must
E exist a controversy between the parties; (ii) these proceedings must involve a 'right'; (iii) these proceedings must be brought by a person who has a proper and tangible interest in obtaining the order; (iv) the controversy must be subject to the court's jurisdiction; (v) the defendant must be a person having a proper or tangible interest in
F opposing the plaintiff's claim; and (vi) the issue must be ripe, *ie,* not of academic interest or hypothetical. The plaintiff had failed to satisfy any of the above conditions to justify this court to grant the relief sought *vide* the OS. The plaintiff failed to demonstrate that under the FC he had the right to the relevant information before the defendant
G undertook the delineation exercise. (paras 32-34)

(2) This OS was neither an action commenced as a representative action nor a public interest litigation. The plaintiff must show that he has a proper and tangible interest to move this court by way of the declaratory relief. The plaintiff merely referred to himself as a voter
H of Petaling Jaya Parliamentary Constituency and Bukit Gasing State Constituency in all the documents that were placed before this court. The plaintiff had not averred in the affidavit filed that there was interference with his public right such that would affect his private right or that he had suffered some special damage peculiar to him
I from such interference. Neither was there any averment by the plaintiff as to how the plaintiff's rights were said to have been affected by the act of the defendant as there was yet to be any action by the defendant under the respective provision of art. 113 and the 13th

Schedule of the FC. The plaintiff failed to demonstrate how he was prejudiced by the act of the defendant. The OS commenced by the plaintiff did not involve any rights of the plaintiff being affected and/or denied. The plaintiff did not have the standing and/or the *locus standi* to commence the instant case against the defendant. (paras 25-31 & 37)

(3) The delimitation exercise is a continuous process which is eventually to be decided by the House of Representatives. The procedure in the 13th Schedule of the FC expressly provided the mechanism to be adopted and the *locus standi* of interested persons wishing to raise representations objecting any alteration of a constituency. The right to make representations pursuant to Items 4 and 5 of the 13th Schedule of the FC are based on the copy of the defendant's recommendations and not the notice. The former is more detailed while the notice merely states the effect of the recommendations. The application by the plaintiff for the relevant information to be supplied to enable him to make the representations would render the words 'and a copy of their recommendations is open for inspection at a specified place within the constituency' in Item 4(a); 'that representations with respect to the proposed recommendations' in s. 4(b); and 'any representations objecting to the proposed recommendations' in Item 5, superfluous and meaningless. (paras 55-57)

(4) The application by the plaintiff *vide* the OS for the defendant to provide the relevant information as stated in the prayers for declaratory reliefs in the OS to enable the plaintiff and the 'all affected persons' to make representations is an act of reading words into the provisions which are not intended and not giving consideration to the words existing in Items 4 and 5 of the 13th Schedule of the FC. The declaratory reliefs sought by the plaintiff, if granted, would have the effect of declaring the defendant to do something which the defendant was not required to do under the FC, something outside and beyond the scope and/or the function of the defendant under art. 113 of the FC. (paras 58 & 59)

(5) The proper avenue to raise all the various shortcomings and seek answers as to whether the defendant's recommendations complied with the principles in cl. 2 is at the local enquiry conducted by the defendant and not the courts. Article 113 of the FC had entrusted it upon the defendant to undertake the delimitation process within the framework of the said article and Items 4 and 5 of the 13th Schedule of the FC. Therefore, the defendant was only to perform its obligation as stipulated in art.113 of the FC. The relief sought by the plaintiff *vide* the instant OS was clearly outside the scope and functions of the defendant. This OS, besides being premature, was also an abuse of the process of the court. (paras 75-77)

Case(s) referred to:

Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor [1994] 2 MLJ 297 ***(refd)***
Boyce v. Paddington Borough Council [1903] 1 Ch 109 ***(refd)***
Caxton (Kelang) Sdn Bhd v. Susan Joan Labrooy & Anor [1987] 2 CLJ 36; [1987] CLJ (Rep) 504 HC ***(refd)***
Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v. Dato' Seri Dr Zambry Abdul Kadir; Attorney General, (Intervener) [2010] 2 CLJ 925 FC ***(refd)***
Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***
His Royal Highness Sultan Ismail Petra Ibni Al Marhum Sultan Yahya Petra v. His Royal Highness Tengku Mahkota Tengku Muhammad Faris Petra & Anor And Another Case [2011] 1 CLJ 541 FC ***(refd)***
Lim Kim Cheong v. Lee Johnson [1993] 1 SLR 313 ***(refd)***
Malik Brothers v. Narendra Dadhich AIR [1999] SC 3211 ***(refd)***
Manggai v. Government of Sarawak & Anor [1970] 1 LNS 80 FC ***(refd)***
Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor [2015] 8 CLJ 367 CA ***(refd)***
Perwira Habib Bank Bhd v. Sardar Mohd Roshan Khan [2011] 5 CLJ 886 CA ***(refd)***
Rediffusion (Hong Kong) Ltd v. Attorney General of Hong Kong [1970] AC 1136 ***(refd)***
Russian Commercial and Industrial Bank v. British Bank for Foreign Trade [1921] All ER 329 ***(refd)***
Sakapp Commodities (M) Sdn Bhd v. Ceal Abraham [1998] 4 CLJ 812 CA ***(refd)***
See Chee How & Anor v. Pengerusi Suruhanjaya Malaysia Pilihan Raya (Election Commission Of Malaysia) [2015] 8 CLJ 431 HC ***(refd)***
Tengku Jaffar Tengku Ahmad v. Karpal Singh [1993] 4 CLJ 183 HC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 10, 113
Rules of Court 2012, O. 15 r. 16
Rules of the High Court 1980, O. 15 r. 16
Specific Relief Act 1950, s. 41

For the plaintiff - Malik Imtiaz & Sreekant Pillai; M/s Sreekant Pillai
For the defendant - Shamsul Bol Hassan; SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Asmabi Mohamad J:

Introduction

[1] By originating summons dated 19 January 2015 ('encl. 1'), the plaintiff sought to obtain relevant information pertaining to the proposed delimitation of Parliamentary and state borders ('delimitation exercise') to be carried out by the defendant pursuant to the notice to be issued under item 4, Part II, Thirteenth Schedule of the Federal Constitution ('13th Schedule of the FC').

[2] For the purpose of the above the plaintiff sought the following declaratory reliefs from this court:

(a) that all the affected persons have the right to all information in relation to changes made to Parliamentary and State Constituencies where these people were registered voters or all other Parliamentary or State Constituencies;

(b) that all information which may be relevant ('the relevant information'), including the recommendations or proposed recommendations ('the recommendations'), map or maps of the constituency, voting areas and the reasons for the proposed changes including all relevant documents used in support and/or the justification of the proposed changes;

(c) that all the affected persons be conferred with the right to the relevant information in the form which would enable all the affected persons to make effective representations pertaining to the proposed recommendations under item 5 of the 13th Schedule of the FC;

(d) that the defendant does not have the right or authority to restrict the right of examination of all the affected person only to the physical examination for recommended proposals at the designated and fixed location in a constituency; and

(e) that the relevant information, including the publication of the information in digital form available *via* the defendant's web page or copies of the same be made available to the affected person, whether living in Malaysia or outside Malaysia at nominal costs, to enable the said affected persons to make effective representations within the time provided by item 4(b) of the 13th Schedule of the FC.

The Cause Papers

[3] For the purpose of the instant originating summons ('the OS') the following documents were filed and referred to by the court:

(a) The OS dated 19 January 2015 ('encl. 1');

(b) Affidavit in support affirmed by the plaintiff on 16 January 2016 ('encl. 2');

(c) Defendant's affidavit in reply affirmed by the Chairman of the defendant, Tan Sri Dato' Seri Abdul Aziz bin Mohd Yusof on 16 February 2015 ('encl. 3'); and

(d) Plaintiff's affidavit in reply affirmed by the plaintiff affirmed on 25 February 2015 ('encl. 4').

A **Background Facts**

[4] The background facts leading to the filing of this OS had been well illustrated by learned counsel for the plaintiff in learned counsel's written submission. These facts are reproduced below with some modifications:

B (a) The plaintiff is a registered voter in the Parliamentary Constituency of Petaling Jaya Selatan P105 and the State Constituency of the State Legislative Assembly of Bukit Gasing. The plaintiff was also among the majority of 52% popular voters during the 13th General Election ('13th GE');

C (b) Around October 2013, the defendant had announced to the public of its intention to gather information to commence a nationwide delimitation exercise in accordance with items. 4 and 5 of the 13th Schedule of the FC.

D (c) Pursuant to the said exercise, the public will be allowed to make representations after the publication of the delimitation notice by way of *gazette* at identified areas and in the local newspapers circulating in the constituencies.

E (d) The representations can be made within one (1) month of the gazetting of the delimitation notice at an identified area of a particular constituency.

F (e) By a letter dated 8 December 2014 the plaintiff wrote to the defendant requesting from the defendant that he be supplied with all relevant information to enable him to make an informed representations relating to the said process. This request was made under items. 4 and 5 of the 13th Schedule of the FC.

G (f) In the same letter the plaintiff had impressed upon the defendant his concern that the right of representations would seem illusory in view of the short period given for him to make such representations. The plaintiff was of the view that the relevant information must be supplied earlier than the *gazette* of the delimitation notice due to the following factors:

H (i) The plaintiff will be restricted to review the proposed changes for the constituency that he is registered at a designated location;

(ii) He is also restricted to review changes for other constituencies at designated locations scattered in different constituencies in the state of Selangor. This exercise would assist and/or facilitate the plaintiff in making effective representations from all constituencies; and

I (iii) Under the scheme of item 5(b) of the 13th Schedule of the FC, the plaintiff has to physically travel to each constituency to enable him and 99 other registered voters to make representations to the defendant.

[5] As such the request for the relevant information would have to be viewed from the above perspectives. Despite the application having been made for the relevant information to be supplied to the plaintiff *vide* "Exh. HF-4" annexed to encl. 3, until the date of the filing of this OS the defendant had failed and or neglected to supply the relevant information to the plaintiff.

[6] The plaintiff then moved this court by way of this OS to seek for the abovementioned declaratory reliefs.

The Issues For The Court's Determination

[7] The plaintiff had framed the following three issues for this court's determination:

(a) Whether this court has jurisdiction to grant the relief that the plaintiff has sought *vide* this originating summons;

(b) Whether the plaintiff has the requisite *locus standi* to bring this proceedings; and

(c) Whether the plaintiff has the right to the relevant information by virtue of art. 10 of the FC.

Discussions Of The Issues And Decisions Of The Court

Issue 1: Whether this court has jurisdiction to grant the relief that the plaintiff has sought vide this Originating Summons

Issue 2: Whether the plaintiff has the requisite locus standi to bring this proceeding

[8] I propose to deal with these two issues together as these issues are interrelated and could be dealt with in one go.

[9] The instant originating summons was made pursuant to O. 15 r. 16 of the ROC as well as s. 41 of the Specific Relief Act 1950.

[10] Order 15 r. 16 of the ROC provides as follows:

> No action or other proceeding shall be open to objection merely on the ground that a declaratory judgment or order is sought thereby, and the court may make binding declarations of rights whether or not consequential relief is or could be claimed.

[11] Chapter VI of the Specific Relief Act 1950 provides that the court has the discretion to grant declaratory decrees. Section 41 provides as follows:

> **41. Discretion of Court as to declaration of status or right**
>
> Any person entitled to any legal character, or to any right as to property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for further relief:

A Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

[12] The principles and applicability of O. 15 r. 16 of the ROC had been discussed in a plethora of cases. In *Perwira Habib Bank Bhd v. Sardar Mohd* B *Roshan Khan* [2011] 5 CLJ 886, the Court of Appeal held as follows:

[21] We are mindful that while no action shall be open to objection on the ground that a merely declaratory judgment or order is sought, it must however be immediately emphasised that the power of the court in this regard, though unlimited, is discretionary. This power must be C exercised judicially, based on established judicial principles, in the light of the facts and circumstances prevailing in each particular case, including the pleadings by which the parties are bound. The exercise of that discretionary power must not be unprincipled. In this connection, the declaratory judgment or order sought in the plaintiff's prayer must not be construed in isolation. It must instead be D construed conjunctively with the plaintiff's statement of claim in its entirety.

[13] In *Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor* [1994] 2 MLJ 297 the court had quoted with approval the case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; E [1988] 2 MLJ 12 where His Lordship Hashim Yeop Sani SCJ (as His Lordship then was) said:

Order 15 r 16 of the Rules of the High Court 1980 cannot be made to be the basis of jurisdiction for the court to entertain an action which is not properly before it. This is in consonance with what was said by Viscount F Dilhorne in *Gouriet v. Union of Post Office Workers & Ors* [1977] 3 All ER 70 that O 15 r 16 'does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the court. It merely provides that no objection can be made on the ground that only a declaration is sought.'

G **[14]** In *Tengku Jaffar Tengku Ahmad v. Karpal Singh* [1993] 4 CLJ 183; [1993] 3 MLJ 156, the defendant had relied on the grounds, amongst others, the plaintiff lacked the *locus standi* to commence the action against the defendant. On this issue the court held that:

... I hold that the Plaintiff, purely on the ground of being of the Malay race H and a subject of the Sultan of Kelantan, is not clothed with the necessary *locus standi* since there does not seem to be any form of interference of his private right beyond that of any other Malays and subject of the Sultan of Kelantan, a qualification which is essentially required to be proved.

[15] In reference to O. 15 r. 16 of the Rules of the High Court (RHC), I His Lordship stated as follows:

Counsel for the plaintiff refer to O 15 r 16 … He claims that a declaration sought under O 15 rule 16 is not open to objection. I am afraid that I do not agree with him for it is an accepted rule of practice that a party must

have the necessary *locus standi* before he is allowed to and be heard in legal proceedings.

[16] In *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade* [1921] All ER 329 at p. 447, Lord Dunedin held as follows:

> that the granting of a mere declaration is a matter of discretion, and that that discretion ought to be shown in granting such declaration "sparingly," "with care and jealously" and "with extreme caution". I confess that, to my mind, such expressions give little guidance …
>
> The rules that have been elucidated by a long course of decisions in the Scottish courts may be summarised thus:
>
> The question must be real and not theoretical question; the person raising it must have real interest to raise it; he must be able to secure a proper contradictor - that is to say, someone presently existing who has a true interest to oppose the declaration sought.

[17] The learned Senior Federal Counsel ('SFC') had raised the objection on the issue of *locus standi* of the plaintiff to seek declaratory reliefs and not merely seeking the declaration as such. As the issue of jurisdiction is a threshold issue to be decided, the learned SFC submitted that the issue to be decided is whether the plaintiff can institute and maintain any action, be it private matter of public interest litigation based on the factual matrix of this case.

[18] A perusal of the OS would show that the plaintiff had sought various declaratory orders with respect to the review of the division of the Federation and States into constituencies in accordance with art. 113 of the FC or more specifically the procedure for delimitation of constituencies provided under items. 4 and 5 of the 13th Schedule of the FC to be undertaken by the defendant.

[19] The facts had also disclosed that at the time this OS was filed the defendant had not undertaken any steps to carry out the nationwide delimitation exercise as reported earlier. So the *factual matrix* in the case at hand is slightly different from the facts in the case of *Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor* [2015] 8 CLJ 367 where the notice pursuant to item 4 of the 13th Schedule of the FC had already been gazetted and/or published in the newspaper. In the instant case there was no notice issued under item 4(a) of the 13th Schedule of the FC but the plaintiff merely relied on a newspaper report pertaining to an exercise which the defendant proposed to do in the near future (see exh. "HF1" of encl. 3).

[20] The issue for consideration is whether the plaintiff has the *locus standi* to move this court by way of the instant OS when there is no controversy between the plaintiff and the defendant herein. At the time the OS was filed the plaintiff was not in any way affected by any action of the defendant as the defendant had not yet commenced the said delineation process and/or

A taken any action towards that direction. Therefore the plaintiff was not in any way aggrieved by the decision of the defendant within the meaning enunciated in the case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade* [*supra*].

B **[21]** What the plaintiff sought this court to do was for this court to declare that the plaintiff is entitled to the relevant information even before the defendant carries out the delimitation exercise. According to the plaintiff he requires the relevant information for the purpose of enforcing his future rights under the 13th Schedule of the FC should the defendant undertake the said exercise. Learned counsel for the plaintiff seemed to suggest that this C could be done and that this court must move away from the conventional approach and adopt a more liberal approach in granting declaratory relief adopted by other jurisdictions.

[22] Guided by the cases which I had highlighted herein, I am of the view that the plaintiff still has the burden to prove to this court that he has the *locus* D *standi* and/or a tangible interest to move this court by way of the instant OS. A perusal of the OS would disclose that the plaintiff in the instant case was not only moving the court for his own benefit as a voter in his Parliamentary and State Constituencies but also for 'all affected persons', but he has not identified who these people are. Neither has the plaintiff shown to this court E that he has the necessary mandate to act on behalf of "all affected persons" to seek for declaratory relief.

[23] From the language of the OS, the plaintiff was not only concerned of his position as a voter in his own Parliamentary Constituency of Petaling Jaya Selatan P105 and or his State Legislative Assembly of Bukit Gasing but F the nationwide delimitation exercise to be undertaken by the defendant. This could be gleaned from the body of exh. "HF-4" annexed to encl. 3 where the plaintiff had requested from the defendant all relevant information to be supplied to him including all proposed changes to be made, all map or maps of the proposed constituency including voting areas, reasons for proposed G changes along with the documents to support such proposed changes.

[24] A perusal of the OS would also show that the plaintiff had commenced this OS not only for 'all affected persons' who are living in Malaysia but also for those who are living outside Malaysia.

H **[25]** This OS is neither an action commenced as a representative action nor a public interest litigation. The first hurdle which the plaintiff had to cross is to show that he has the proper *locus standi* or standing, in that, he must show that he has a proper and tangible interest to move this court by way of the declaratory relief.

I

[26] In order to resolve this issue I had sought guidance from the case cited by the learned SFC, *Boyce v. Paddington Borough Council* [1903] 1 Ch 109 at p. 114 which relate to the special circumstances under which a private person could be said to have the necessary standing to sue without joining the Attorney General as follows:

> A plaintiff can sue without joining the Attorney General in two cases: first where the interference with the public right is such as that some private right of his at the same time is interfered with (e.g. where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason of the obstruction interferes with his private right of access from and to his premises to and from the highway); and, secondly, where no private right is interfered with but the plaintiff in respect of his public right suffers special damage peculiar to himself from the interference with his public right.

[27] Reference is also made to the case of *Malik Brothers v. Narendra Dadhich* AIR [1999] SC 3211 where the Supreme Court of India had laid down the test for determining whether an application is a public interest litigation or otherwise as follows:

> Public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the courts of law in public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be bounden duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated.

[28] What the plaintiff was seeking from the court *vide* his OS do not fall within any of the purposes stated above. In fact what the plaintiff was asking the court to declare was something beyond the scope of duty and/or responsibilities of the defendant to do under the FC and/or compelling the defendant to perform a duty or function not provided by the FC.

[29] The proposed acts of the plaintiff in interfering with other constituencies would also affect the local enquiries to be held should the defendant decide to undertake the delimitation exercise and the rights of voters in those constituencies. By asking the court to grant the reliefs sought *vide* the OS, the plaintiff is therefore interfering with the constitutional right of the voters in those constituencies to make representations.

[30] The plaintiff merely referred to himself as the voter of Petaling Jaya Parliamentary Constituency and Bukit Gasing State Constituency in all the documents that were placed before this court. The plaintiff had not averred

A in the affidavit filed herein that there was interference with his public right such that would affect his private right or that he had suffered some special damage peculiar to him from such interference. Neither was the plaintiff able to demonstrate in his affidavit that there was a controversy or a ripe issue between him and the defendant.

B **[31]** Neither was there any averment by the plaintiff as to how the plaintiff's rights were said to have been affected by the act of the defendant as there was yet to be any action by the defendant under the respective provision of the art. 113 and the 13th Schedule of the FC. The plaintiff could not demonstrate how he was prejudiced by the act of the defendant.

C **[32]** In order to be entitled to the declaratory relief sought herein the plaintiff must satisfy the six conditions laid down in the case of *Caxton (Kelang) Sdn Bhd v. Susan Joan Labrooy & Anor* [1987] 2 CLJ 36; [1987] CLJ (Rep) 504; [1988] 2 MLJ 604 (*'Caxton'*). In *Caxton*, Her Ladyship Justice Siti Normah Yaacob (as Her Ladyship then was) had quoted what
D PW Young wrote about declaratory relief in his book entitled *'Declaratory Relief'*, 2nd edn as follows:

> One that does not involve a cause of action in the usual sense and six factors must be present before there can be a declaratory order.

E **[33]** The six factors listed by PW Young are:

(a) There must exist a controversy between the parties;

(b) These proceedings must involve a 'right';

(c) These proceedings must be brought by a person who has a proper or
F tangible interest in obtaining the order, which is usually referred to as 'standing' or *'locus standi'*;

(d) The controversy must be subject to the court's jurisdiction;

(e) The defendant must be a person having a proper or tangible interest in opposing the plaintiff's claim; and

G (f) The issue must be ripe, *ie*, it must not be academic interest, hypothetical or one whose resolution would be of no practical utility.

[34] From the affidavits filed herein by the plaintiff, it would appear that the plaintiff had failed to satisfy any of the above conditions to justify this court to grant the relief sought *vide* the OS. The plaintiff failed to
H demonstrate that under the FC he has the right to the relevant information before the defendant undertakes the delineation exercise.

[35] There is a plethora of cases to guide the court in granting a mere declaration and some of these cases had been highlighted herein. These cases seemed to suggest that generally the principle to guide this court in
I exercising its discretion to grant the relief in the form of a mere declaration the court must be satisfied that "the question must be real and not theoretical question; the person raising it must have real interest to raise it;

he must be able to secure a proper contradictor - that is to say, someone presently existing who has a true interest to oppose the declaration sought." (see *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade* [*supra*]. A

[36] In the often quoted case of *Sakapp Commodities (M) Sdn Bhd v. Cecil Abraham* [1998] 4 CLJ 812; [1998] 4 MLJ 661 the court had laid down the principles for the court to exercise its discretion in granting declaratory reliefs, amongst others, generally the court will not grant a declaratory judgment where an adequate alternative remedy is available (see *Manggai v. Government of Sarawak & Anor* [1970] 1 LNS 80; [1970] 2 MLJ 41), or a hypothetical case or an issue of no practical consequence (see *Lim Kim Cheong v. Lee Johnson* [1993] 1 SLR 313 or one which is premature (see *Rediffusion (Hong Kong) Ltd v. Attorney General of Hong Kong* [1970] AC 1136). B C

[37] The OS commenced by the plaintiff did not involve any rights of the plaintiff being affected and/or denied and there is already a scheme within the FC for the purpose of the delimitation process which will be discussed in turn herein. Guided by the above quoted high authorities, I am of the view that the plaintiff had not satisfied this court that it had the standing and/or the *'locus standi'* to commence the instant case against the defendant. For this reason alone this OS must be dismissed. D E

Issue 3: Whether The Plaintiff Has The Right To The Relevant Information By Virtue Of Art. 10 Of The FC.

[38] Notwithstanding my findings on Issues 1 and 2 above on the standing and or *'locus standi'* of the plaintiff to pursue this OS against the defendant, for the sake of completeness I would also delve on Issue 3 to examine if based on the *factual matrix* of this case the plaintiff was entitled to the relief in the form of declaration that was sought herein. F

[39] This would involve the discussions of the salient provisions of the FC, especially art. 113 and items. 4 and 5 of the 13th Schedule of the FC. G

[40] The defendant is empowered to carry out the review under cl. 2 of art. 113. Generally, this clause confers power on the defendant to conduct a review of the Federal and State Constituencies and recommend changes as they may think necessary. But this power can only be exercised after an interval of eight years from the last review. H

[41] Specifically, however where the Legislative Assembly of a State enacts a law to alter the number of elected members to the State Legislative Assembly, the defendant is required to undertake a review of the area which is affected by such alteration within two years from the date the said law by virtue of cl. 3A(i) of art. 113. I

[42] The FC however created an exception to cl. 3A(i) by enacting cl. 3B. According to this clause, where the enacted law of a State comes into force after the lapse of eight years and if the defendant is of the view that it is necessary to undertake a review under cl. 2 - the defendant has the power not to undertake a review under cl. 3A(i) and to undertake a review under cl. 2. The defendant when undertaking such a review is however under a duty to take into account any area which is affected in consequence of the amendment or law referred to in cl. 3A(i).

[43] The defendant undertaking a review under art. 113 of the FC is required to comply with the procedure for the delimitation of constituencies provided in s. 4 of the 13th Schedule of the FC.

[44] Item 4 of the 13th Schedule reads as follows:

> Where the Election Commission have provisionally determined to make recommendations under Clause (2) of Article 113 affecting any constituency, they shall inform the Speaker of the House of Representatives and the Prime Minister accordingly, and shall publish in the *gazette* and in at least one newspaper circulating in the constituency a notice stating:
>
> (a) the effect of their proposed recommendations, and (except in the case where they propose to recommend no alteration be made in respect of the constituency) that a copy of their recommendations is open to inspection at a specified place within the constituency; and
>
> (b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice, and the Commission shall take into consideration any representations duly made in accordance with any such notice.

[45] Item 4(a) requires the defendant to publish in a newspaper a notice to notify the public of the effect of the defendant's proposed recommendations pursuant to a review exercise and to direct them to the places within the constituency where a copy of the defendant's proposed recommendations is opened for inspection.

[46] On the face of Item 4(a), the intent of the notice is merely to state the effect of the Election Commission's proposed recommendations. The Schedules in the notice and the copy of the Election Commission's proposed recommendations to be provided when the Election Commission's ("EC") undertakes the delimitation exercise would have sufficient information to inform a registered voter of an alteration of his constituency. For example:

(a) A voter would know that his existing State Constituency has been moved to another Federal Constituency;

(b) There is a new State constituency in his Federal Constituency;

(c) The number of electors for each Parliamentary Constituency and the number of electors for each State Constituency is sufficient for a voter to raise questions concerning the matter of weightage that was given by the EC, bearing in mind that the electors for each constituency in the State ought to be approximately equal according to item 2(c) of the 13th Schedule.

[47] Any representations to be made are made based on this copy of the proposed recommendations and not on the notice. This is obvious from the words, "that representations with respect to the proposed recommendations may be made to the Commission" appearing in item 4(b). The notice only states the effect of the recommendations whilst the copy of the proposed recommendations has more details and particulars.

[48] The only condition item 4(b) imposes is that the representations must be made within one month after the publication of the notice. This means that anyone can send representations to the defendant within this time and the defendant is required to consider them.

[49] The apex court has reminded time and again that no portion of the fundamental law should be treated as superfluous. In *His Royal Highness Sultan Ismail Petra Ibni Almarhum Sultan Yahya Petra v. His Royal Highness Tengku Mahkota Tengku Muhammad Faris Petra & Anor And Another Case* [2011] 1 CLJ 541; [2011] 1 MLJ 1 the Federal Court quoted this passage from *Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v. Dato' Seri Dr Zambry Abdul Kadir; Attorney General (Intervener)* [2010] 2 CLJ 925; [2010] 2 MLJ 285 where at p. 299:

> The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous.

[50] Item 4 is part of the supreme law and its provisions cannot be rendered meaningless. This is the effect if the notice is interpreted to take the place of the defendant's proposed recommendations. Hence whatever relevant information that the plaintiff would require to enable him to exercise his rights to make a representation could be viewed in the proposed recommendations which would be made available once the same is open for inspection at the designated location. The FC does not require the particulars to be inserted in the notice. The FC too does not envisage that the relevant information has to be supplied to the plaintiff beforehand.

[51] Item 5 on the other hand expressly provides the *locus standi* of a person who wishes to object to a proposal altering a constituency. Item 5 reads as follows:

> Where, on the publication of the notice under section 4 of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receive any representation objecting to the proposed recommendations from:
>
> (a) the State Government or any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation; or
>
> (b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,
>
> the Commission shall cause a local enquiry to be held in respect of those constituencies.

[52] The representation under item 5 requires the person seeking to object to the alteration of a constituency to do so only if he is a registered voter of the constituency and he must do together with a body that consist of at least 100 persons whose names appear on the current electoral roll.

[53] Item 5 which is part of the Supreme law has provided statutorily the *locus standi* to raise representations and the place to raise them which is at the local enquiry conducted by the EC. The procedure in s. 5 is mandatory and must be followed. The 13th Schedule was inserted in the FC by the Constitution Amendment Act, 1962 (Act 14/1962) and the explanatory statement for its inclusion states as follows:

> Under the present proposals, the Election Commission, after holding a review as the Constitution already provides, will formulate provisional recommendations, framed in accordance with the principles set out in Part I of the new Thirteenth Schedule introduced by Clause 31. The recommendations will be published, and the Commission will revise them in the light of any representations received and submit them to the Prime Minister. The results of the Commission's work will be laid before the House of Representatives, …

[54] In the Parliamentary Debates Official Report dated 29 January 1962 the then Deputy Prime Minister when moving the bill for second reading stated as follows:

> I am sure that Honourable Members will agree that the proper authority for deciding the delimitation of constituencies is this House.

[55] It is therefore very clear that the delimitation exercise is a continuous process which is eventually to be decided by the House of Representatives. The procedure in the 13th Schedule of the FC has expressly provided the mechanism to be adopted and the *locus standi* of interested persons wishing to raise representations objecting any alteration of a constituency.

[56] Therefore, items 4 and 5 envisage two types of representation:

(i) representations which are general in nature provided under item 4(b); and

(ii) representations specifically objecting to any proposed alteration of a constituency provided under item 5.

[57] The right to make representations pursuant to items 4 and 5 are based on the copy of the defendant's recommendations and not the notice. The former is more detailed while the notice merely states the effect of the recommendations. The application by the plaintiff for the relevant information to be supplied to enable him to make the representations would render the words, "and a copy of their recommendations is open for inspection at a specified place within the constituency" in item 4(a); "that representations with respect to the proposed recommendations" in item 4(b); and "any representations objecting to the proposed recommendations" in s. 5, superfluous or meaningless.

[58] Further the application by the plaintiff *vide* the OS for the defendant to provide the relevant information as stated in the prayers for declaratory reliefs in the OS to enable the plaintiff and the 'all affected persons' to make representations is an act of reading words into the provisions which are not intended and not giving consideration to the words existing in items. 4 and 5 of the 13th Schedule of the FC.

[59] The declaratory reliefs sought by the plaintiff, if granted, would have the effect of declaring the defendant to do something which the defendant is not required under the FC to do, something outside and beyond the scope and or the function of the defendant under art. 113 of the FC.

[60] The FC has provided that the forum to raise questions and shortcomings of the defendant's recommendations at the enquiry to be convened by the defendant to hear objections provided by items. 5 and 6 of the 13th Schedule of the FC.

[61] In *Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor* [2015] 8 CLJ 367 the question posed for the consideration of the Court of Appeal was whether the s. 4 notice was bad as it lacked detailed particulars to enable the respondent to make an effective representation to the Election Commission ('EC'). The Court of Appeal held that the learned judge was wrong in requiring the EC to furnish the detailed particulars to the respondent as there was no requirement under the FC for the detailed particulars to be put in the notice. The detailed particulars required by the FC had already been put in the proposed recommendations which were accessible to the respondents at the designated location.

[62] In the course of that, the Court of Appeal held that to interpret the item 4(a) notice as requiring very detailed particulars apart from the effect of the proposed recommendations for the purposes of making the representations, would render the words, "and a copy of their recommendations is open for inspection at a specified place within the constituency" in item 4(a) and the words, "that representations with respect to the proposed recommendations" in item 4(b); and "any representations objecting to the proposed recommendations" in item 5 superfluous or meaningless.

[63] It could glean from the judgment of the Court of Appeal, the meaning of the word 'effect' in item 4(a) of the 13th Schedule of the FC of art. 113 of the FC is as follows:

> means no more than the consequence and resulting changes brought about by the proposed recommendations following the EC's determination under cl. 2 of art 113 of the Constitution. The word has no causal link to the requirement to disclose detailed particulars of the proposed recommendations, let alone particulars of the nature mentioned by the learned judge.

[64] The Court of Appeal went further to rule at para. 40 of the judgment:

> We note that there is nothing in s. 4 nor indeed in the whole of the Thirteenth Schedule that can be construed as to require 'detailed particulars' to be stated in the notice under s. 4(a), as the respondents seem to be suggesting …

[65] At para. 41, the Court of Appeal said:

> Nor do we find any ambiguity in the words "stating the effect of their proposed recommendations" in s. 4(a) of the Thirteenth Schedule. It means what it says, that is, to state the effect or consequence of the proposed recommendations. It does not mean to state the adverse effect or adverse consequence of the recommendations. To give such construction would be to read words into the section which are not there.

[66] Drawing the analogy from the above case, the defendant herein is not required under the FC to provide the very detailed information sought by the plaintiff herein. Whatever relevant details that could be given would be stated in the recommendations to be made available to the defendant and those interested. The relevant information required by the FC would be incorporated in the recommendations to be made available for inspection at the designated location.

[67] What the plaintiff proposed for this court to do *vide* this OS is to declare that he and 'all affected persons' are entitled to the relevant information to enable the plaintiff to prepare himself in event the defendant proceeds with the delimitation exercise. Taking the que from the decision of the Court of Appeal, even in the formal notice under item 4

the defendant is not required to state the detailed particulars in the item 4 notice, what more to provide the relevant information sought by the plaintiff before such an exercise is undertaken by the defendant.

[68] The Court of Appeal went further to state that the purpose of the notice is merely to bring to the attention of the public the 'effect' of the proposed recommendations. Interested members of the public are entitled to inspect a copy of the EC's proposed recommendations at the specified places and make representations if they so wish. The Court of Appeal had adopted the meaning of the word 'effect' as defined in the Concise Oxford English Dictionary to mean, "which is a result or consequence of an action or other cause". Only the result or consequence is to be stated in the notice.

[69] In *See Chee How & Anor v. Pengerusi Suruhanjaya Pilihan Raya Malaysia* [2015] 8 CLJ 431 T the learned judge of the High Court held that the following particulars are also required to be stated in the notice:

(i) the proposed electoral roll;

(ii) the exhaustive list of changes to the Parliamentary and State Constituencies;

(iii) the polling station districts on the map;

(iv) the administrative, physical and infrastructural boundaries on the map;

(v) the electorate size; and

(vi) the land mass of the proposed constituencies

[70] On appeal, the Court of Appeal held that these items do not fall within the meaning of 'effect of the proposed recommendations'. These are additional details not envisaged by item 4 and would be beyond the intention of the said provision.

[71] Drawing the analogy from this case it would appear that the defendant has no obligation under the 13th Schedule to provide the relevant information requested by the plaintiff. Even in a situation where a notice in accordance with item 4 of the 13th Schedule had been gazetted and or published in the newspaper circulating in the constituency, the Court of Appeal ruled that the defendant was not required to provide the detailed particulars as were ordered by the judge at the first instant. The Court of Appeal took the view that these items do not fall within the meaning of 'effect of the proposed recommendations'.

[72] The Court of Appeal did not agree with the order given by the learned judge of the High Court that the Draft Constituencies Plan suffers from 'serious and considerable lack of particulars' as it does not show the effect of the proposed recommendations.

[73] According to the Court of Appeal the proper forum to raise any complaints, shortcoming including adequacies and sufficiency of the particulars concerning a recommendation altering a constituency is at the local enquiry held upon representations objecting to such alteration is made to the EC. The court is therefore not the proper forum. This is because the proposed recommendations are merely provisional in nature and subject to revision upon the local enquiry being held.

[74] The plaintiff instead of waiting for the defendant to hold a local enquiry to trash out all issues and shortcomings to verify and rectify the recommendations, resorted to the court by way of this OS for him to be supplied with the relevant information.

Conclusion

[75] The proper avenue to raise all the various shortcomings and seek answers as to whether the defendant's recommendations complied with the principles in s. 2 is at the local enquiry conducted by the defendant and not the courts.

[76] From the above illustration it is clear that art. 113 of the FC had entrusted it upon the defendant to undertake the delimitation process within the framework of the said article and items. 4 and 5 of the 13th Schedule of the FC. Therefore the defendant is only to perform its obligation as stipulated in art. 113 of the FC. In view of the above it would appear that the relief sought by the plaintiff *vide* the instant OS is clearly outside the scope and functions of the defendant. There is no provision in the FC which requires the defendant to do what the plaintiff is asking this court to do. I repeat para. 49 herein with regard to the interpretation and construction of the provisions of the FC.

[77] Based on the aforesaid it is my humble view that this OS, besides being premature, is also an abuse of the process of court. For the above stated reasons, encl. 1 is therefore dismissed with costs of RM5,000 to be paid by the plaintiff to the defendant.